



Town of Hampden

Planning Board

Wednesday April 12, 2017, 7:00 pm

Municipal Building Council Chambers

## Agenda

1. Administrative
  - a. Minutes – March 8, 2017
2. Old Business – None
3. New Business
  - a. Minor Site Plan Review: MRC/Fiberight. Request for Modification to Planning Board Order and revision to the overall property boundary for the purpose of establishing frontage on Coldbrook Road to allow construction of the Fiberight facility to proceed in a timely fashion.
  - b. Public Hearing: Proposed Zoning Ordinance Amendment to Article 1, General Administration, related to conflicts with other ordinances and the process for amending the zoning ordinance.
  - c. Public Hearing: Proposed Zoning Ordinance Amendment to Sections 3.7.4, 3.7.6, 7.2, and adding a new Section 4.25 to Article 4, all related to accessory apartments.
  - d. Public Hearing: Proposed Zoning Ordinance Amendment to Sections 4.7, Off-Street Parking, Drive-Thru Design, and Bufferyard Requirements, and Section 4.8, Signs.
4. Staff Report
5. Planning Board Comments
6. Adjournment



Town of Hampden  
Planning Board  
Wednesday March 8, 2017, 7:00 pm  
Municipal Building Council Chambers  
**Minutes**

**In Attendance:**

Planning Board

Eugene Weldon, Chair  
Kelley Wiltbank  
Michael Avery  
Peter Weatherbee  
Jim Davitt  
Tom Dorrity

Staff & Others

Karen Cullen, AICP, Town Planner

Chairman Weldon called the meeting to order at 7:00 pm.

1. Administrative
  - a. Minutes of February 8, 2017 meeting: Motion by Member Weatherbee to approve as submitted; second by Member Wiltbank, carried 5/0/1 (Davitt abstained).
2. Old Business: none.
3.
  - a. Public Hearing: Proposed Zoning Ordinance Amendment to Sections 3.4.2, 3.5.2, 3.6.2, 3.7.3, 3.8.3, 3.9.2, 3.13.2, 3.14.3, 4.1.9.1, 4.2.3.9, 4.8.1, 4.8.3.6, 4.8.3.7, 4.8.6, 4.10, and 7.2, all related to the use of a residence for business purposes (home occupations).

Chairman Weldon opened the public hearing at 7:02 pm, and noting there were no members of the public in attendance, closed the public hearing immediately.

Ordinance Committee (OC) Chairman Avery gave a report on the proposed amendment, noting the OC had met twice on this amendment, the last meeting being February 6<sup>th</sup> when the OC voted unanimously to recommend referral with a recommendation "ought to pass" to Town Council. He noted the language contained one error, where a phrase had inadvertently been left in the most recent draft. Specifically, in §4.10.5.4, delete "other than a sign in conformance with §4.8, Signs."

Motion by Member Avery to send the proposed amendments on home occupations as amended tonight (see above change to §4.10.5.4) to Town Council with a recommendation of "ought to pass"; seconded by Member Wiltbank. Chairman Weldon called a roll call vote; with all in favor the vote was 6/0/0.

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Member Davitt commented that he had been out due to illness and had missed these meetings, but upon review of the proposed amendments he thought they were well thought out and congratulated those involved on a job well done.

b. Report from the Ordinance Committee on other amendments in progress.

Amendments related to accessory apartments: Planner Cullen handed out the most recent draft with a redline notation of an error she had found earlier in the day; the definition of accessory apartment as written is inconsistent with the regulations. Chairman Weldon noted that the OC had reviewed this and had voted unanimously to send to the Planning Board for public hearing with a recommendation "ought to pass." After discussion it was apparent there was dissatisfaction with the draft as written. Motion by Member Wiltbank to send the accessory apartment amendment back to the OC for further review prior to scheduling a public hearing; seconded by Member Avery, so voted 6/0/0.

Amendments on flexibility in design standards: Planner Cullen noted these amendments are being worked on to add guidance for permit granting authorities and will be back before the OC for additional review.

Amendments to Article 1: Member Weatherbee reported the OC had discussed this and thought the proposed changes were good and resulted in better language and a better and clearer process than is currently in place. The Planning Board agreed this is ready for public hearing and requested Planner Cullen to schedule it. Discussion ensued as to whether to hold this until the other amendments (accessory apartments and flexibility in design standards) are ready for hearing.

Ordinance Committee and meeting schedule: Planner Cullen requested that the Planning Board consider setting a standard monthly meeting for the OC, and also to re-appoint or appoint members to the committee. After discussion, Chairman Weldon appointed Members Avery (Chair), Weatherbee, Wiltbank, and Weldon as members of the OC, with Members Syversen, Davitt, Reilly, Scott, and Dorrity as alternates on the OC. This was confirmed upon motion by Member Wiltbank and second by Member Avery, with unanimous vote (6/0/0). The Board also decided to set a regular meeting schedule with the meetings to be on the third Tuesday of each month at 6:30 pm, in the conference room at the Town Offices. Chairman Weldon encouraged all Board members to attend all OC meetings, noting that any Board member (full or alternate) in attendance at any OC meeting will be welcome to participate and vote on any item before the committee.

The meeting was adjourned at 7:44 pm by motion of Member Davitt with second by Member Wiltbank; motion carried 6/0/0.

*Respectfully submitted by Karen Cullen, Town Planner*

Materials reviewed or handed out at the meeting:

- Proposed zoning amendment for home occupations (for public hearing)
- Proposed zoning amendment for accessory apartments (hand-out)

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Town of Hampden  
Land & Building Services

Report on Application  
Minor Site Plan Revision  
MRC/Fiberight

To: Planning Board  
From: Karen M. Cullen, AICP, Town Planner *KMC*  
Date: April 4, 2017  
RE: Report on Minor Site Plan Application for MRC/Fiberight

Project Information

Applicant: MRC/Fiberight  
Site Location: Off Coldbrook Road  
Zoning District: Industrial  
Proposal: Revise the overall property boundary for the Fiberight parcel to include the access road and a parcel on Coldbrook Road in order to provide road frontage for the site until the construction of the access road is complete and the road is accepted by the Town of Hampden. Modify condition #21 regarding the issuance of a building permit.

As you know, the Planning Board approved the site plan request for MRC/Fiberight on July 19, 2016. Due to circumstances beyond their control, they were unable to commence construction of the roadway early enough in 2016 to meet their original construction timeframe for the Fiberight facility. At this point they have almost completed construction of the first half of the roadway, but construction of the remaining infrastructure (roadway, water, and remaining sewer and drainage) will take a number of months to complete. Town acceptance of the roadway and infrastructure is not expected until later in 2017.

Condition #21 of the Board Order reads as follows:

“The proposed new road to provide access to the development site is proposed to be constructed pursuant to the Town Ways Ordinance. No building permit for the proposed Solid Waste Processing Facility shall be issued until the proposed new road is either accepted by the Town of Hampden as a public way or, alternatively, is constructed through the base course of paving with the balance of work secured by a performance bond or other surety in an amount established by the Department of Public Works and in a form acceptable to the Town Attorney.”

As you can see, obtaining a building permit for the Fiberight facility is dependent on construction of the road, either through base course with a surety or through Town acceptance. Neither of these options is realistic if MRC is going to be able to meet its' obligation to have solid waste

accepted at the Fiberight facility starting on April 1, 2018. They need the option to obtain a building permit prior to either of those two events taking place. Therefore, they have submitted an application to modify the Board Order in two ways:

1. Modify condition #21 to provide another option for being able to obtain a building permit, and
2. Modify the boundaries of the Fiberight parcel to provide the required frontage (150') on Coldbrook Road. This modified boundary will be temporary, once the road is accepted by the town it will revert back to the approved version.

The application materials submitted include a redlined version of condition #21 and a new boundary plan.

The applicant has submitted this as a minor site plan revision in accordance with the site plan regulations in the zoning ordinance. Condition #2 of the Board Order states that if MRC requests any changes to the Order, the Planning Board is the only authority that can act on it. It further states that "insubstantial" changes can be dealt with at any Planning Board meeting, while "substantial" changes require a public hearing. Staff believes that the requests being made by MRC in this application are insubstantial and therefore a public hearing is not required. We believe this is the case since the modification in the parcel boundary is temporary and once the roadway is accepted by the Town, the Fiberight parcel will be the same as was approved by the Planning Board in July 2016. There are no modifications to the building or the Fiberight development site proposed (other than the boundary as discussed above).

Town staff (CEO, DPW, and Planner) have reviewed the submitted materials and consulted with the Town Attorney on several issues:

1. The application materials include an Option Agreement between the current land owner and MRC. This agreement contemplates a deed being prepared which will convey the roadway right-of-way and a parcel of land on Coldbrook Road for the purpose of providing the required 150' of frontage to make the Fiberight parcel a stand-alone parcel that conforms to the zoning requirements. The deed is the document which will allow the CEO to issue a building permit. The option agreement provides MRC with standing to proceed with the application before the Planning Board.
2. Staff was concerned that the transfer of land back and forth might implicate the subdivision ordinance; the town attorney has assured us that is not the case.
3. Staff questioned whether the proposed modification to condition #21 (now 21a) which changes the responsibility for setting the type and amount of surety from the DPW and Town Attorney to the Town Council was appropriate; the town attorney felt it was not a problem to make that change.
4. The Town Attorney also did not have a problem with having the Town Manager and Town Attorney assume that responsibility for setting the type and amount of surety in the proposed condition 21b.

In summary, the MRC is asking the Planning Board to approve a modification to the Board Order that will allow a building permit to be issued before the roadway is completely done, in such a way that the town will not be at risk in the development of the Fiberight facility.



Engineers ♦ Environmental Scientists ♦ Surveyors

March 28, 2017

Ms. Karen Cullen, Town Planner  
Town of Hampden  
106 Western Avenue  
Hampden, Maine 04444

**Re: MRC/Fiberight Minor Site Plan Revision**

Dear Karen:

On behalf of MRC and Fiberight, CES, Inc. is submitting the enclosed Minor Site Plan Revision Application to be reviewed by the Planning Board at the April 12<sup>th</sup> meeting. The proposed change includes a revision to the project property boundary such that the MRC parcel will have frontage on Coldbrook Road. This proposed change will be an interim situation until the proposed access road is complete and accepted by the Town (with the two-acre parcel at Coldbrook Road then deeded back to Hickory Development). The final project property boundary will be the same as was previously approved by the Planning Board. We are also requesting some minor changes to the language in the signed Planning Board Order related to issuance of a building permit in this respect.

Included with this letter are 11 copies of the following supporting documents:

- ♦ Minor Site Plan Revision Application
- ♦ Proposed redline changes to the signed Planning Board Order
- ♦ Amended Option Agreement between MRC and H.O. Bouchard/Hickory Development
- ♦ Interim Boundary Survey Plan

Also included is a check for \$75 to cover the application fee.

Please let us know if you have any questions or need additional information. We look forward to discussing these items in more detail with the Planning Board next week.

Sincerely,  
CES, Inc.

Sean Thies, P.E.  
Senior Project Manager

SMT/gdr

Enc.

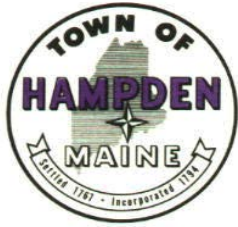
cc: Greg Louder, MRC  
Jon Pottle, EP

Ms. Karen Cullen | 03.28.2017 | 10973.005 | Page 1



Seven Locations in Maine | [www.ces-maine.com](http://www.ces-maine.com)

465 South Main Street  
PO Box 639  
Brewer, Maine 04412  
T 207.989.4824  
F 207.989.4881



# TOWN OF HAMPDEN

## CODE ENFORCEMENT OFFICE

### Minor Site Plan Revision Application

FEE: \$75.00

APPLICATION DATE: \_\_\_\_\_

This application covers Section 4.1.8 Minor Revisions of the Town of Hampden Zoning Ordinance. This application applies to situations where all conditions in SECTION 3 can be met.

#### SECTION 1. OWNER/APPLICANT INFORMATION

Applicant or Agent's Name: \_\_\_\_\_ Phone # \_\_\_\_\_

Mailing Address: \_\_\_\_\_  
Address Town/City State Zip Code

Land Owner's Name: \_\_\_\_\_ Phone # \_\_\_\_\_

Mailing Address: \_\_\_\_\_  
Address Town/City State Zip Code

#### SECTION 2. PROPERTY INFORMATION

Street Number: \_\_\_\_\_ Street Name: \_\_\_\_\_

Tax Map & Lot # \_\_\_\_\_ Zoning District(s): \_\_\_\_\_

Current use(s) of the property: \_\_\_\_\_

Original Site Plan Approval Date (if known): \_\_\_\_\_

Square Footage of Building(s): \_\_\_\_\_

#### SECTION 3. JURISDICTIONAL REVIEW

1. Is there an existing site plan for this property?

- ☐ Yes → Is the site development in conformity with the approved plan?
  - ☐ Yes → Go to # 2
  - ☐ No → Not eligible for Minor Revision, Site plan review required.
- ☐ No → Site plan review required

2. Will your building expansion/addition or outbuilding exceed 250 square feet?

- ☐ Yes → Site plan review required
- ☐ No → Go to # 3

3. Has the building been added to in the past 5 years?

- ☐ Yes → Will the current proposal, and any previous expansions exceed 250 square feet?
  - ☐ Yes → Site Plan review required (250 square foot cap over five year period)
  - ☐ No → Go to # 4
- ☐ No → Go to # 4

4. Will your project increase, decrease or interfere with existing parking, loading or maneuvering areas?

☐ Yes → Site plan review required

☒ No → Will your proposal create additional parking demand?

☐ Yes → Site plan review required

☒ No → Go to # 5

5. Will the proposal require you to eliminate required screening or buffers?

☐ Yes → Site plan review required

☒ No → Go to **SECTION 4.**

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#### **SECTION 4. PROJECT DESCRIPTION**

Please describe the proposed revision/alteration to the Planning Board approved site plan. Please be thorough to avoid delays in the review of your project. Feel free to consult with Town staff regarding what supporting documentation may be required.

The overall property boundary has been revised to include the access road and parcel on Coldbrook Road in order to provide road frontage for the site until the construction of the access road is complete and the road is accepted by the Town of Hampden.

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#### **SECTION 5. CERTIFICATION**

I hereby certify that I have been authorized by the owner of record to make this application as his/her authorized agent. I further certify that the information provided on this application and any supporting data submitted as an attachment is accurate to the best of my knowledge. I agree to comply with all applicable laws, rules, regulations, ordinances, etc.

Signature of Applicant: \_\_\_\_\_

Date: 28 Feb 2017

Signature of Owner: \_\_\_\_\_

Date: \_\_\_\_\_

\*\*\*\*\*

#### **Below Line for Staff Use Only**

Date Received: \_\_\_\_\_ Fee: \_\_\_\_\_ Acct #: \_\_\_\_\_ Permit #: \_\_\_\_\_

Notes: \_\_\_\_\_

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Minor Site Plan Revision approved in accordance with Article 4.1.8. Date Approved: \_\_\_\_\_  
(Dated by last to sign)

\_\_\_\_\_  
Code Enforcement Officer

\_\_\_\_\_  
Town Planner

\_\_\_\_\_  
Public Safety Director

\_\_\_\_\_  
Public Works Director

Conditions: \_\_\_\_\_



## **Proposed Minor Revision to Condition 21**

### **Sureties**

21. The proposed new road to provide access to the development site is proposed to be constructed pursuant to the Town Ways Ordinance. Any building permit for the proposed Solid Waste Processing Facility shall conform to either of the following conditions (as applicable and as may be elected by the applicant(s)):

a. Building Permit After New Road Accepted as Public Way. No building permit for the proposed Solid Waste Processing Facility shall be issued until the proposed new road is either accepted by the Town of Hampden as a public way or, alternatively, is constructed through the base course of paving with the balance of work secured by a performance bond or other surety ~~in an amount established by the Department of Public Works and in a form acceptable to the Town Attorney~~ as required by the Town Ways Ordinance; or, alternatively,

a-b. Building Permit Prior to New Road Being Accepted as Public Way. Prior to acceptance of the new road as a public way, no building permit for the proposed Solid Waste Processing Facility shall be issued until an acceptable form of surety is provided to cover the estimated cost to complete the new road including costs to complete subsurface utilities (sewer, water, and storm drains). The estimated cost to complete the new road and subsurface utilities shall be determined on the basis of usual, customary, and reasonable costs for similar construction, and may take into account construction already completed. The applicant(s) shall provide surety in the form of cash, certified bank checks, bonds, irrevocable letters of credit, or such other forms deemed acceptable by the Town Manager and Town Attorney as to sufficiency, manner of execution, and amount, which may be reduced pursuant to satisfactory completion of phases or parts of the new road construction. The applicant(s) shall record a limited easement to provide the Town and/or a third party the right to enter the subject property and engage in construction activities therein for the purpose of completing the aforescribed construction in the event that the surety must be utilized.

## SECOND AMENDMENT OF OPTION TO PURCHASE

THIS SECOND AMENDMENT OF OPTION TO PURCHASE (hereinafter the "Amendment") dated as of March 28, 2017 is made by and among **H. O. Bouchard, Inc.**, a Maine corporation with a place of business in Hampden, Maine, **Hickory Development, LLC**, a Maine limited liability company with a place of business in said Hampden (hereinafter collectively referred to as "Seller"), and **Municipal Review Committee, Inc.**, a Maine nonprofit corporation with a principal place of business in Ellsworth, Maine, (hereinafter referred to as "Buyer").

Seller and Buyer entered into a certain Option to Purchase dated December 1, 2014, as amended by Amendment dated February 25, 2016, (collectively the "Option to Purchase") wherein Seller granted Buyer an exclusive option to purchase certain Property owned by Seller in Hampden, Penobscot County, Maine more particularly described in the Option to Purchase.

Buyer has requested, and Seller has agreed, to amend certain provisions in the Option to Purchase in order to address municipal and state permitting considerations.

In consideration of the foregoing recitals and of the mutual promises and benefits contained herein, the parties hereby agree to amend the Option to Purchase as follows:

### Terms and Conditions during the Option Term, Paragraphs 1-6:

1. The introductory paragraph is amended to delete the phrase "generally depicted on Exhibit A attached hereto, together with an easement for a right of way for all purposes, including utility services, along the private road depicted on Exhibit A" and to substitute, in its place, the phrase "depicted on the Survey attached as Exhibit A attached hereto".
2. Exhibit A attached to the Option to Purchase is hereby deleted in its entirety and replaced with the Exhibit A attached hereto.
3. References to March 31, 2017 in Paragraph 1 Option Term are deleted and replaced by June 30, 2017.

### Terms and Conditions upon exercise of the Option, Paragraphs 1-13:

1. The first sentence of Paragraph 1 Purchase Price is deleted in its entirety and replaced with the following three sentences:

"The total purchase price for the Property shall be based on the valuation of \$[REDACTED] per acre for that portion of the Property crosshatched on Exhibit B attached hereto (the "Site"). For purposes of clarity, the purchase price shall not include any acreage within the 2.0 acre parcel hatched on Exhibit B and shall not

include any acreage within that portion of the 100' corridor leading from Coldbrook Road to southwesterly line of the Site (the "Buildable Lot" and the "Corridor", respectively). In consideration of other mutual benefits, at closing Buyer shall be entitled to a credit against the purchase price in the amount of \$[REDACTED]".

2. Paragraph 6 Property is hereby deleted in its entirety.

3. Paragraph 2 Deed is amended to include at the end:

"Seller shall reserve in the deed to Buyer a nonexclusive easement, to be used in common with Buyer and others, for a right of way for all purposes, including utility services, along the private road to be constructed by Purchaser within the Corridor depicted on Exhibit B, for the benefit of existing lands of Seller, which easement shall be on customary and reasonable terms mutually agreed upon by Seller and Buyer prior to delivery of the deed ("Seller's reserved easement"). Upon acceptance by the Town of Hampden of the private way as a town way, Seller's reserved easement shall automatically terminate and Buyer shall deliver to Seller (or Seller's successor as owner of land adjoining the private way) a quitclaim deed with covenant as to any portion of the Buildable Lot and the Corridor not included within the bounds of said town way, subject to an easement reserved by Buyer for utility services existing as of the date of acceptance, if any, appurtenant to the Property. The determination as to the most favorable location for said private road and utility connections within the Corridor shall be determined by a joint evaluation of the parties hereto as soon as is practicable after closing.

The deed shall also provide that the fee to the Buildable Lot and the Corridor shall not be sold, conveyed, encumbered (except as expressly permitted herein), or transferred separate from the fee to the Site, except for a transfer to the Town of Hampden or to Seller as contemplated herein."

4. The second Paragraph 5 Closing is amended to delete the phrase "within sixty (60) days of Seller's receipt of notice of Buyer's exercise of the option as stated herein" and to substitute, in its place, the phrase "on or about May 1, 2017".

5. Paragraph 6 Conditions of Closing is amended to delete the first sentence which begins with the phrase "It is a condition of closing..." in its entirety and to include at the end of Paragraph 6

"Buyer shall cause the private road leading from Coldbrook Road to the southwesterly line of the Site (the 'Private Road') to be constructed to town way standards (other than the final top coat) on or before August 31, 2017 or, in the case of causes beyond Buyer's control (including but not limited to weather conditions, labor shortages or force majeure), as soon thereafter as is reasonably practicable.

Upon completion of such construction, Buyer shall use its continual and best efforts to cause the Private Road to be accepted by the Town of Hampden as a town way. Buyer's best efforts shall include, but not be limited to, promptly requesting that the Town of Hampden accept the Private Road as a town way upon completion of construction and, in the event the Private Road is not accepted as a town way, Buyer shall thereafter, at intervals reasonably acceptable to Seller but in no event not less frequently than once every three years nor, without Buyer's agreement, more frequently than once every twelve (12) months, request that the Town of Hampden accept the Private Road as a town way.

Until such time as the Private Road is accepted as a town way, Buyer shall cause the Private Road to be maintained and repaired to town way standards as though it was accepted as a town way. Additionally, Buyer or Seller shall request, at Buyer's sole expense, the town public works director or a third party road engineer reasonably acceptable to Buyer and Seller to inspect the Private Road at least annually, and more often as needed. If the results of any such inspection indicate that any maintenance and repairs to the Private Road is required to maintain the Private Road to town way standards, Buyer shall promptly undertake and complete such maintenance and repairs at its sole expense.

In the event Buyer, after continual and best efforts, is unable to cause the Private Road to be accepted as a town way within three (3) years from the date of the deed to Buyer then, at anytime thereafter, Seller can elect, in writing given to Buyer, to waive the condition that Buyer cause the Private Road to be accepted as a town way. In the event of any such election, Buyer shall be required to pay Seller an amount equal to the then fair market value of the Buildable Lot. In such event, Buyer's obligation to give a deed as set forth at the end of Paragraph 2 Deed and Buyer's obligations to cause the Private Road to be accepted as a town way shall terminate.

For purposes of determining whether or not the Private Road has been built to town way standards, the existing standards are set forth at Article II of the Town Of Hampden Town Ways Ordinance attached hereto as Exhibit C, as the same may be amended, (the 'Road Standards'), and Buyer's obligations hereunder are contingent upon meeting the Road Standards set forth in Exhibit C as of the date of completion.

In the event Seller reasonably believes, in good faith, that the Road Standards have not been met, Seller shall provide Buyer with a written statement setting forth the relevant standard(s) that has/have not been met and the nature of any discrepancy or failure to meet the same (the 'deficiency'). Buyer shall thereafter have a reasonable period of time to respond to and, if applicable, cure any such deficiency, provided, however, that a written statement, at any time or from time to time, from either the director of public works for the Town of Hampden or from a road engineer reasonably acceptable to Buyer and Seller that the Private Road has met or has not met the Road Standards shall be presumptive evidence of the same. The parties expressly agree that failure of the Private Road to have been accepted as a town way

shall not be conclusive evidence that the Private Road has not been built to the Road Standards.

The foregoing obligations are covenants that run with land and shall be binding on Buyer and Buyer's successors and assigns. Buyer and Seller shall cause to be recorded at closing an agreement or other evidence as to the agreements and obligations set forth above."

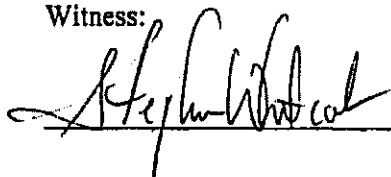
In all other respects, the terms and conditions of the Option to Purchase shall remain in full force and effect.

Capitalized terms herein shall have the meaning set forth in the Option to Purchase.

IN WITNESS WHEREOF, the parties have hereunto caused this Amendment to be signed and sealed by the undersigned, duly authorized. This Amendment may be executed in any number of counterparts, each of which when shall be an original; but such counterparts shall constitute but one and the same agreement. For purposes of this Amendment, a facsimile signature shall be deemed an original.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

Witness:



Hickory Development, LLC

By: 

Its General Manager  
Duly Authorized

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SIGNATURES APPEAR ON THE FOLLOWING PAGE]

Witness:

*Stephen Whitcomb*

H.O. Bouchard, Inc.

By: *[Signature]*

Its *General Manager*  
Duly Authorized

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SIGNATURES APPEAR ON THE FOLLOWING PAGES]

Dennis Hayes

**Municipal Review Committee, Inc.**

By: 

Gregory Louder, Its Executive Director  
Duly Authorized



**EXHIBIT A**



**EXHIBIT B**



**EXHIBIT C**

## ARTICLE II STANDARDS AND REQUIREMENTS

**2.1 Connection With Existing Town Way** – All streets or roads shall provide connection with existing Town approved town ways. *(Amended 02-01-10)*

**2.2 Intersections** – Shall not be less than sixty (60) degrees.

**2.3 Widths Of Town Ways** – Except for industrial streets or roads, town ways shall have a right-of-way width of sixty-six (66) feet. Industrial roads shall have a right-of-way width of one hundred (100) feet. *(Amended 02-01-10)*

**2.4 Grades** – Grade shall not have less than 0.5% nor more than 8%. The roadway area of said way shall be graded to its full width of twenty-six (26) feet for the distance for which acceptance is requested and shall conform accurately to the grades and cross-sections shown on the plan and profile of said town way and as accepted by the Hampden Planning Board. All roads and streets shall be properly drained with suitable ditches and street culverts so that all storm water will be drained from the area. The Road Commissioner or the Hampden Planning Board may require loaming and seeding of slopes to help prevent erosion. *(Amended 02-01-10)*

**2.5 Clearing Of Stumps and Roots** – Said way shall be cleared of all stumps, roots, brush, perishable material and all trees not intended for preservation. All loam, loamy material, clay, and other yielding material shall be removed from said way to at least subgrade depth, or as directed by the Road Commissioner or Public Works Dept.

**2.6 Side Slopes** – Petitioner shall provide the land necessary for cut or fill slopes beyond the limits of the street right-of-way.

**2.7 Subgrade** – With the exception of industrial ways, said way shall be graded to the subgrade of eighteen (18) to twenty-four (24) inches as specified by the Hampden Planning Board or Road Commissioner. Industrial ways shall be graded to a subgrade depth of not less than twenty-four (24) inches.

**2.8 Gravel Base** – The roadway area of said way shall be brought to the grade shown on the plan, profile, and cross-section of said way by suitable gravel or material approved by the Road Commissioner or Public Works Dept. The base gravel shall be brought to within four (4) inches of the finish grade, and the top four (4) inches shall be selected materials suitable for finish grade on gravel roads. All gravel shall be thoroughly compacted and rolled and the final surface left true to the established lines and grades.

**2.9 Surface Treatment** – After the fine gravel has been thoroughly rolled, the surface of the roadway shall be treated with a bituminous pavement. Pavement shall conform to the specifications currently specified by the Maine Department of Transportation for use on State Aid Roads and shall be placed in one-and-a-half inch thickness. Pavement width shall be not less than twenty (20) feet, except in industrial zones where it shall be not less than twenty-four (24) feet, and the roadway shall be provided with a three (3) inch crown from the center line to edge of pavement to insure runoff of water.

**2.10 Cul-de-sac (Dead-end Street)** – All permanent dead-end streets shall be provided with a turn-around with a minimum diameter of sixty (60) feet. In all other respects said turn-arounds shall be constructed in accordance with the same specifications as herein above specified for town ways. *(Amended 02-01-10)*

**2.11 Culverts** – All driveway culverts shall be not less than twelve (12) inches in diameter of corrugated HDPE pipe and not less than twenty (20) feet in length. Said culverts shall be furnished and installed by the owner under the supervision of the Road Commissioner. The Road

Commissioner reserves the right to specify culvert diameter in excess of 12" where necessary to achieve drainage of projected volumes. *(Amended 04-19-16)*

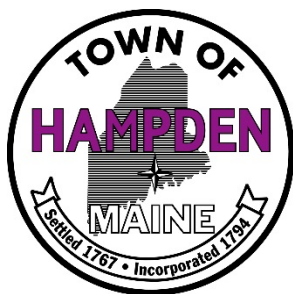
**2.12 Opening Town Ways or Streets** - No town way or street shall be opened for the purpose of installing or repairing sewers, water, gas, or for any other purpose, unless the individual or corporation wishing to make such an opening shall first obtain from the Road Commissioner a Street Opening/Utility Connection permit to do so and agree to pay the full cost of repairing the damage to the street caused by such opening. Refer to the Town of Hampden Street Opening/Utility Connection Ordinance for permit requirements. *(Amended 04-19-16)*

**2.13 Modified or Additional Standards** - The Road Commissioner may modify or require additional standards due to local soil, physical, or topographical conditions, provided that modifications and variances secure substantially the objectives of the standard or requirement so varied or modified.

- 1) "MAINE STATE HIGHWAY COMMISSION RIGHT OF WAY MAP, STATE AID HIGHWAY 3, HAMPDEN, PENOBSCOT COUNTY, FEDERAL AID PROJECT S-0285(2)", DATED AUGUST 1962, S.H.C. FILE NO. 10-142, SHEET 1 OF 2
- 2) "MAINE STATE HIGHWAY COMMISSION RIGHT OF WAY MAP, STATE 95 S. A. 3, HAMPDEN, PENOBSCOT COUNTY, FEDERAL AID PROJECT NO. 1-95-7(16) & S-0285(2)", DATED NOVEMBER 1961, S.H.C. FILE NO. 10-128, SHEET 42 OF 46.
- 3) OLD HAMPDEN LOTTING PLAN DATED MARCH 26, 1842, RECORDED IN MAP FILE VOLUME 2, PAGE 2 OF THE PENOBSCOT COUNTY REGISTRY OF DEEDS.

- 1) ALL BOOK AND PAGE NUMBERS REFER TO THE PENOBSCOT COUNTY REGISTRY OF DEEDS.
- 2) THE UNDERLYING COORDINATE SYSTEM IS BASED UPON THE MAINE STATE PLANE COORDINATE SYSTEM, EAST ZONE, NAD83 DATUM.
- 3) THE DIRECTION OF LINES REFER TO THE GRID NORTH MERIDIAN.





Town of Hampden  
Land & Building Services

## Public Hearing Notice Zoning Amendment

Notice is hereby given that the Hampden Planning Board will conduct a public hearing at 7:00 p.m. on Wednesday, April 12, 2017, in the Municipal Building Council Chambers, located at 106 Western Avenue, Hampden, to hear the following:

1. Proposed Zoning Ordinance Amendment to Article 1, General Administration, related to conflicts with other ordinances and the process for amending the zoning ordinance.
2. Proposed Zoning Ordinance Amendment to Sections 3.7.4, 3.7.6, 7.2, and adding a new Section 4.25 to Article 4, all related to accessory apartments.
3. Proposed Zoning Ordinance Amendment to Sections 4.7, Off-Street Parking, Drive-Thru Design, and Bufferyard Requirements, and Section 4.8, Signs.

Copies of the proposed ordinance amendments are available below or at the Municipal Building or online at [www.hampdenmaine.gov](http://www.hampdenmaine.gov).

Paula A. Scott  
Town Clerk



Town of Hampden  
Land & Building Services

## Memorandum

From: Karen M. Cullen, AICP, Town Planner *KME*  
Date: March 22, 2017  
RE: Amendments to Zoning Ordinance regarding Article 1 (Process), Accessory Apartments, and Flexibility in Site Design Standards

The Planning Board will hold a public hearing on April 12, 2017 on the following proposed amendments to the Zoning Ordinance.

***Article 1, General Administration:***

The proposed amendment eliminates outdated language which is no longer needed, reorganizes the provisions to clarify the process to amend the Zoning Ordinance, corrects inconsistencies with state law, and deletes reference to a public hearing at the town council level (which is included in the Town Charter).

***Accessory apartments:***

Currently, "accessory apartments" are treated the same as a two family dwelling in the Zoning Ordinance, and they are not treated the same in all districts. The proposed amendments will create a mechanism for homeowners to establish an accessory apartment in their single family home, and it will apply equally in all districts.

***Flexibility in site design standards:***

Currently the Zoning Ordinance provides no opportunity for flexibility in off-street parking, drive-thru design, bufferyard, or signage requirements. The proposed amendments allow waivers to certain requirements to be granted in cases where there will not be detrimental impact on abutters or the neighborhood.

## ARTICLE 1 - GENERAL ADMINISTRATION

### 1.1 Title and Purpose

This Ordinance shall be known and may be cited as the "Zoning Ordinance of the Town of Hampden, Maine" and will be referred to herein as this "Ordinance". It is enacted by the inhabitants by dividing the Town into zones and regulating the use and construction of buildings and premises with a view to encourage the most appropriate use of land in the Town of Hampden, Maine.

### 1.2. Basic Requirement

All buildings or structures hereinafter erected, reconstructed, altered, enlarged, or moved, and all uses of premises in the Town of Hampden shall be in conformity with the provisions of this Ordinance. No building, structure, land or water area shall be used for any purpose or in any manner except as permitted within the district in which such building, structure, land, or water area is located.

### 1.3. Severability

Should any section of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Ordinance.

### 1.4. Conflict with other Ordinances

This Ordinance shall in no way impair or remove the necessity of compliance with any other rule, regulation, by-law, permit or provision of law. Where this Ordinance imposes a greater restriction upon the use of the land, buildings, or structures, the provisions of this ordinance shall prevail.

~~All ordinances or parts of ordinances now existing which are in conflict with the provisions or intent of this Ordinance are hereby repealed.~~

### 1.5. Amendment

1.5.1. *Initiation of Amendment* - An amendment to this Ordinance may be initiated by:

1. The planning board, provided a majority of the board has so voted;
2. Request of the town council to the planning board;
3. Written petition of ten (10) percent of the registered voters of the town; or
4. Written application from the property owner seeking a change of the zoning classification for the owner's property, or any portion thereof (i.e. a map amendment). Any person or entity with a legally binding interest in or to said property may make such an application, provided such person or entity submits satisfactory evidence of such interest and written documentation from the property owner authorizing such person or entity to make application for the change of zoning classification.

### 1.5.2. ~~Proposed Text~~ Amendments

~~1. Text Amendments—Any proposed amendment to the text of this Ordinance that has not been initiated by the planning board shall be referred to the planning board for its review and recommendation. The planning board shall make a recommendation of approval or denial for any proposed text amendment, and may make a recommendation of approval with proposed modifications for any proposed text amendment. Such recommendation(s) shall be returned to the council within forty-five (45) days after the next regularly scheduled meeting of the Planning Board following the date of referral of the proposed amendment to the board. Failure of the board to make a recommendation within the allotted time shall constitute a recommendation of denial for the purpose of this Ordinance.~~

### 2.1.5.3 Zoning District Amendments (Map Amendments)

- a1. Owner Initiated: The owner of a property seeking a change in the zoning classification of his/her property. Any proposed amendment to the zoning classification of property initiated under (see Article 1.5.1 (4)) shall be processed by the completion and filing of a form for such purposes file a zoning map amendment application with the code enforcement officer, together with payment in accordance with the Town of Hampden Fees Ordinance, with the planning office. (Amended: 11-17-03)
2. Petition Initiated: The person or entity who initiated a petition to amend the zoning classification of any property or group of properties shall be responsible for filing a zoning map amendment application, together with payment in accordance with the Town of Hampden Fees Ordinance, with the planning office.
3. Town Initiated: When a map amendment is initiated by the planning board, the board shall forward a memorandum fully describing the proposed amendment to the town council for information purposes only, prior to holding the public hearing. When a map amendment is initiated by the town council, the council shall refer the proposed amendment to the planning board for a public hearing as required by statute.

### 1.5.4 Process:

1. Public Hearing: b. —Upon receipt of such form and fees, the Code enforcement officer shall take all necessary action to an application, memorandum, or referral, the planning office shall schedule a public hearing to be conducted by the Planning Board on the request proposed map amendment. The planning board shall hold a public hearing within sixty (60) days of receipt of such application and fees by the code enforcement officer.

Notice Requirements: —Prior to said public hearing, and in accordance with the requirements of this Ordinance and the laws of the State of Maine, notice of said hearing shall be given. —Said The notice shall include, but not be limited to, the following information:

- i) —Dthe date, time and place of the said hearing, a short description and, for proposed map amendments, a

2. ~~ii) A summary map of the proposed zone change showing the boundaries of the current and proposed zoning districts, and the location where the proposed amendment can be viewed.~~

~~—Publishing Requirements:~~

- a. ~~Said notice shall be published twice in a daily newspaper of general circulation in the Town of Hampden, the first at least twelve (12) days and the second at least seven (7) days in advance of said hearing.~~

- b. ~~Posting Requirements: Said notice shall be posted in the Town Offices at least thirteen (13) days prior to the hearing.~~

~~—Abutter Notification Requirements: For proposed map amendments, in a daily newspaper of general circulation in the Town of Hampden and said notice shall be sent by U.S. Mail to all persons initiating the proposed zone change map amendment, and to all persons owning property within the boundaries of the proposed map amendment, and to all persons owning abutting property and/or within three hundred (300') feet of the exterior boundaries of the real estate to be area affected by said the proposed zone change.~~

- c. ~~For purposes of the notices required under this section, the owners of property shall be considered to be those against whom taxes were assessed on the prior April 1. Failure of any person owning property within said three hundred (300') feet to receive notices provided herein shall not necessitate another hearing or invalidate any action by the planning board or the town council.~~

- e3. ~~Planning Board Recommendation: The planning board shall make a recommendation of approval or denial for any proposed zone change amendment, and may make a recommendation of approval with proposed modifications for any proposed zone change amendment. To constitute planning board approval of such a proposed amendment, the amendment and any proposed modifications thereto must receive at least four (4) affirmative votes from the board. In all cases, the planning board shall forward their recommendation to the town council; this shall be done within 14 days of the completion of the public hearing and, when the proposed amendment was referred to the planning board from town council, within ninety (90) days of the date of said referral. Such recommendation(s) shall be returned to the council in writing within forty-five (45) days of the public hearing. Failure of the board to make a recommendation within the allotted time shall constitute a recommendation of denial for the purposes of this Ordinance.~~

- d. ~~After receipt of the planning board's recommendation, or after expiration of the time allotted for such recommendation, the town council shall hold a public hearing on the proposed amendment within sixty (60) days. Notice of said hearing shall be given as provided in Article 1.5.2(2)(b).~~

~~e. Any proposed amendment to the zoning classification of property initiated pursuant to Article 1.5.1(1) - (3) shall be processed in accordance with Article 1.5.2(2)(b) - (d).~~

#### 1.5.35. Adoption of Amendment

- ~~1. 1. Text Ordinance~~ amendments not involving the zoning classification of property may be adopted by a majority vote of the town council members present and voting, if the amendment is recommended by the planning board, or by a two-thirds majority vote of the town council members present and voting, if the amendment is not recommended by the planning board.
2. ~~Ordinance Map~~ amendments involving the zoning classification of property may be adopted by a vote of five (5) town council members present and voting, if the amendment is recommended by the planning board, or by a vote of six (6) town council members present and voting, if the amendment is not recommended by the planning board.

43. -Amendments adopted by the town council shall become effective thirty (30) days after the date of adoption. (Amended: 5-5-86, 3-2-87, 4-6-87, 2-4-91)

- ~~43.~~ The Department of Environmental Protection shall be notified by the municipal clerk of zone changes (map amendments) in ~~shoreland areas impacted by the~~ or amendments to ~~Shoreland Regulations~~ Zoning Ordinance within thirty (30) days of the effective date of such amendments.

~~4. Amendments adopted by the town council shall become effective thirty (30) days after the date of adoption. (Amended: 5-5-86, 3-2-87, 4-6-87, 2-4-91)~~

**~~1.6. Effective Date~~** ~~The effective date of the ordinance shall be thirty (30) days after it is adopted by referendum vote of the town.~~

**Amend §3.7.4,** Conditional Uses by deleting “two family dwelling” from the list.

- 3.7.4. Conditional Uses (Subject to Site Plan Review where applicable) - Church, nursing home, non-profit school, public schools, community building, government structure or use except storage or repair facility, ~~two family dwelling~~, congregate care facility, buildings necessary for essential services. Animals other than usual pets provided the premises consists of at least 2 1/2 acres, and animals shall be kept a minimum of 50 feet from any property line. (Amended: 8-22-94, 1-21-97)

**Amend §3.7.6,** Special District Regulation, by deleting sections 2, 3, 4, and 5.

- ~~2. Only existing single family dwellings may be converted to a two family dwelling through addition or division. This provision prohibits construction of new two family dwellings or complexes. Where a two family dwelling conversion is proposed the second dwelling unit shall be subordinate to the first or primary dwelling unit. The size of the primary dwelling unit shall not be regulated by this standard. The finished floor area of the subordinate dwelling unit shall be at least 500 sq. ft. so that all subordinate dwelling units constructed under this provision shall be adequate in size. For properties in which the finished floor area of the primary dwelling unit exceeds 1,000 sq. ft., the finished floor area of the subordinate dwelling unit shall not exceed 50 percent of the finished floor area of the primary dwelling unit. (Amended: 06-21-04)~~
- ~~3. Where a two family dwelling conversion is proposed the Planning Board shall determine that design features that distinguish two family dwellings from single family dwellings are avoided. Such designs may prohibit separate driveways, separate front door entrances, broken facades and other such distinguishing characteristics that call attention to the two family use of the building and site development. The Board shall encourage creative use of common driveways, side door entrances, and traditional single family architectural elements. (Amended: 06-21-04)~~
- ~~4. Where a two family dwelling conversion is proposed the Planning Board shall require a report from the Code Enforcement Officer making a determination that the proposed conversion meets applicable building codes and that the conversion is designed in such a way that the structure could easily be returned to a single family dwelling, and detailing what building alterations are required to do so. (Amended: 06-21-04)~~
- ~~5. In addition to the minimum lot area requirements found in 3.7.5. two family dwellings shall provide an additional 10,000 square feet in lot area.~~

**Add to §7.2,** Definitions:

Accessory Apartment: A separate housekeeping unit, complete with its own sleeping facilities, kitchen and sanitary facilities, that is contained within the structure of a single family dwelling.

**Proposed new section 4.25**

4.25 Accessory Apartments. Notwithstanding the minimum lot size requirements of this Zoning Ordinance, construction of an accessory apartment is allowed upon the granting of a Conditional Use Permit either within or attached to a new or existing detached single-family dwelling subject to the requirements below:

4.25.1 The purpose of the Accessory Apartment section is to:

- 4.25.1.1 Provide homeowners with a means of providing relatives with housing, enabling the homeowner to provide care and companionship in a private home setting;
- 4.25.1.2 Provide homeowners with a means of obtaining, through tenants in accessory apartments, rental income, companionship, security, and services, and thereby to enable them to stay more comfortably in homes and neighborhoods they might otherwise be forced to leave;
- 4.25.1.3 Add rental units to the housing stock to meet the needs of smaller households, both young and old; and
- 4.25.1.4 Protect stability, property values, and the residential character of a neighborhood by ensuring that accessory apartments are installed only in owner-occupied houses and under such additional conditions as may be appropriate to further the purposes of this ordinance.

4.25.2 Accessory Apartment Standards. The following standards must be met for a Conditional Use Permit to be granted:

- 4.25.2.1 Only one accessory apartment may be created within a single-family dwelling.
- 4.25.2.2 The owner(s) of the residence in which the accessory apartment is located must occupy at least one of the dwelling units on the premises.
- 4.25.2.3 The accessory apartment shall be clearly a subordinate part of the single family dwelling, designed so that the appearance of the building remains that of a single family residence. Where feasible, any new entrances should be located on the side or rear of the building.
- 4.25.2.4 An accessory apartment shall occupy no more than 40 percent of the living area of the structure and shall be no greater than 800 square feet nor have more than one bedroom. An addition to the original building is permitted provided that the addition is designed in such a manner as to retain the appearance of the building as a single family dwelling.
- 4.25.2.5 In order to provide for the development of housing units for disabled and handicapped individuals, the Planning Board will allow reasonable deviation from these limits to allow installation of features that facilitate access and mobility for the occupants in cases where an accessory apartment is designed or remodeled for such individuals.
- 4.25.2.6 There shall be at least one dedicated off-street parking space provided for the accessory apartment, and to the extent feasible it shall be located to the side or the rear of the structure.



## Amend §4.7 Off-Street Parking, Loading, Drive-Thru Design and Bufferyard Requirements

4.7.1 Parking Basic Requirement - No use of premises shall be authorized or extended, and no building or structure shall be constructed or enlarged, unless there is provided for such extension, construction or enlargement, off-street parking spaces in accordance with the following parking requirements. No required parking space shall serve more than one use, unless approved under §4.7.1.7. Parking areas with more than five (5) parking spaces shall be so arranged that vehicles can be turned around within such area and are prevented from backing into the street.

4.7.1.5.5 Parking lots to serve newly constructed structures or additions shall be a level, uniform, dust free surface constructed of concrete, bituminous asphalt, brick or pavers, or other similar material. Parking lots to serve pre-existing (as of the date of adoption) structures, including new or expanded uses within said structures, may be constructed of alternate materials such as hard packed dirt or gravel upon a finding by the Code Enforcement Officer that this method of construction will not affect public safety and is otherwise in compliance with the provisions of this Ordinance.

4.7.1.7 Shared Parking within a single development. Within the Village Commercial or Village Commercial II districts, developments with multiple uses may share spaces among the uses to the extent reasonable (e.g. parking demand times differ between uses), provided the permit granting authority finds there will be no detrimental impact on abutting properties and no projected increase in on-street parking in the immediate area of the subject development.

4.7.1.8 Shared Parking between developments. Within the Village Commercial or Village Commercial II districts, abutting properties (separate developments) may share off-street parking spaces, provided both property owners sign a cross-access/shared parking agreement and the permit granting authority finds there will be no detrimental impact on abutting properties not involved in the shared parking, and no projected increase in on-street parking in the immediate area of the subject properties will occur.

4.7.5 Waiver. Any of the requirements set forth in sections 4.7.1 (except Section 4.7.1.6 Handicapped Parking which cannot be waived), 4.7.2, or 4.7.4 may be reduced upon the granting of a waiver by the permit granting authority. To grant a waiver, the permit granting authority must find that the applicant has submitted sufficient evidence to show that the granting of the waiver will not produce an undesirable change in the character of the neighborhood, will not unreasonably detrimentally affect the use or market value of abutting properties, and that the requested waiver is not the result of action taken by the applicant or a prior owner. The permit granting authority shall consider the impact of the requested waiver(s) on public safety, public health, and the minimization of nuisances in making its decision.

Correct ordinance cross-reference in §7.2 Definitions:

*Parking space:* An area exclusive of drives, aisles or entrances, fully accessible for the storage or parking of vehicles designed in accordance with the standards contained in Article 4.7.5 of this Ordinance.

Amend §4.8, Signs by adding a new section to allow flexibility in the standards:

4.8.11 Waiver. Any of the requirements set forth in §4.8.1, 4.8.2, 4.8.3, 4.8.5, 4.8.7, or 4.8.8 may be reduced upon the granting of a waiver by the Code Enforcement Officer, provided no deviation exceeds ten percent. For waiver requests with a deviation exceeding ten percent of the requirement, the Planning

Board shall be the waiver granting authority. To grant a waiver, the waiver granting authority must find that the applicant has submitted sufficient evidence to show that the granting of the waiver will not produce an undesirable change in the character of the neighborhood, will not unreasonably detrimentally affect the use or market value of abutting properties, and that the requested waiver is not the result of action taken by the applicant or a prior owner. The permit granting authority shall consider the impact of the requested waiver(s) on public safety, public health, and the minimization of nuisances in making its decision.